

UNITED STATES OF AMERICA,
and
STATE OF NEW YORK, by and through
its Attorney General,
and
STATE OF ILLINOIS, by and through
its Attorney General,

PLAINTIFFS,

v.

SONY CORPORATION OF AMERICA
and
LTM HOLDINGS, INC.
d/b/a LOEWS THEATRES,
and
CINEPLEX ODEON CORPORATION,
and
J.E. SEAGRAM CORP.

DEFENDANTS.

This Memorandum is filed in support of the United States’ motion for appointment of Alex D. Moglia as trustee (the “Trustee”) in the above captioned case. This case arises from a civil antitrust Complaint and stipulated proposed Final Judgment, filed on April 16, 1998.

The success of the Final Judgment in curing the competitive problems identified in the Complaint depends in part upon the successful divestiture of “Chicago theatre assets” as defined in Section II. H. of the Final Judgment. Defendant has not been able to successfully divest all of the Chicago theatre assets in the time permitted by the Final Judgment and extensions thereunder. Accordingly, Court appointment of a trustee, pursuant to Section V. of the Final Judgment, is warranted.

Alex D. Moglia, of Alex D. Moglia & Associates, the candidate Trustee selected by the United States, possesses the expertise, experience in transactions, and organization to accomplish successfully this undertaking.

Defendants do not oppose the United States’ Motion for Appointment of a Trustee.

I. INTRODUCTION

The United States’ Complaint alleges that the merger of Cineplex Odeon Corporation (“Cineplex”) and LTM Holdings, Inc. (“Loews”), an indirect wholly-owned subsidiary of Sony Corporation of America would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, because it would eliminate significant competition between Loews and Cineplex in the securing and exhibition of first-run films in Manhattan and in the city of Chicago. The Complaint sought adjudication that the merger of Cineplex and Loews would violate Section 7 of the Clayton Act and further sought preliminary and permanent injunctive relief.

A. Final Judgment

The Final Judgment filed with the Complaint and entered by this Court on November 9, 1998, embodies the parties’ agreement to settle the case through prompt divestiture by Loews and Cineplex of 13 theatres in Manhattan (defined as the “Manhattan theatre assets” in the Final Judgment) and 11

theatres in Chicago (defined as the “Chicago theatre assets” in the Final Judgment). This settlement resulted from intensive negotiations between the United States and Loews and Cineplex over a period of several months.

The essence of the settlement is prompt divestiture of the defined Manhattan and Chicago theatre assets for the purpose of establishing one or more viable competitors in both Manhattan and Chicago in the exhibition of first-run motion pictures. To accomplish this objective, the Final Judgment requires that defendants Loews and Cineplex divest the Manhattan and Chicago theatre assets “to an Acquirer or Acquirers acceptable to DOJ in its sole discretion after consultation with the State of New York and to divest the Chicago theatre assets to an Acquirer or Acquirers acceptable to DOJ in its sole discretion after consultation with the State of Illinois.” Final Judgment Section IV. A.

B. Loews’ and Cineplex’s Failure to Divest all the Chicago Theatre Assets

The Final Judgment gave Loews and Cineplex an initial period of one hundred and eighty (180) calendar days after the filing of the Complaint or five (5) days after notice of the entry of the Final Judgment by the Court, whichever was later, in which to make the required divestitures. Final Judgment Section IV. A. Since more than 180 days elapsed prior to the entry of the Final Judgment by this Court, the latter time period was applicable. This latter date was extended twice, with the consent of the United States, to accommodate Loews’ and Cineplex’s requests for additional time to complete the required divestitures.

During the time allotted to Loews and Cineplex, divestiture of the Manhattan theatre assets was made to CSC Holdings (a subsidiary of Cablevision), a purchaser acceptable to the United States (and the State of New York.) Also during the time allotted to Loews and Cineplex, divestiture of all but three of the Chicago theatre assets locations was made to Meridian Entertainment Group Inc.

("Meridian"), a purchaser acceptable to the United States (and to the State of Illinois.) To date, Loews and Cineplex have not been able to accomplish divestiture of the following Chicago theatre assets: 1) 600 North Michigan Avenue, Chicago; 2) 900 North Michigan Avenue, Chicago; and 3) River Run Eightplex, 16621 Torrence Avenue, Lansing. Successful divestiture of each of these locations requires Loews and Cineplex to obtain a purchaser acceptable to the United States (and the State of Illinois), and to obtain consent of the respective landlord of each of these leased properties to an assignment of the lease.

Loews and Cineplex have presented Meredian on at least two occasions as the potential purchaser for one or more of the remaining Chicago theatre assets locations. The United States has given its approval of Meredian as the purchaser, but the landlords refused to consent to lease assignments to Meredian at the 600 North Michigan and River Run locations. The refusal of the landlord to consent to assignment of the 600 North Michigan Avenue location has effectively blocked attempted divestitures to Meredian of the 900 North Michigan Avenue location.

600 North Michigan Avenue

The 600 North Michigan Avenue theatre is a nine screen complex located in the central business district of Chicago. In February 1999, and again in September 1999, Loews presented Meredian as the potential purchaser for this location. On both occasions, after review, the landlord concluded that the proposed assignee did not meet the criteria set forth in the lease and accordingly withheld his consent to an assignment of the lease to Meredian.

900 North Michigan Avenue

The 900 North Michigan Avenue theatre is a two screen site located a few blocks from the 600 Michigan Avenue location. Because of its small size and unusual location (in the basement of a very

upscale multi-use development), this theatre historically has had lower revenues than the 600 North Michigan location. When Loews presented Meredian as the potential purchaser for this theatre in February, 1999, the landlord consented to an assignment of the lease to Meredian. However, because the landlord had refused to consent to the assignment of the 600 North Michigan lease to Meredian, Meredian's banker declined to finance an independent purchase of 900 North Michigan.

River Run Eightplex

The River Run Eightplex is an eight screen complex located in close-in suburban Chicago. Here, Loews and Cineplex presented Meredian as the potential purchaser in February, 1999. After review, the landlord concluded that Meredian did not meet the criteria set forth in the lease, and withheld consent to assignment of the lease.

Given Loews' and Sony's failure to obtain the required landlords' consents, and to divest the remaining Chicago theatre assets, despite extensions of time to do so, it is now appropriate, pursuant to Section V. A. of the Final Judgment to appoint a Trustee selected by the United States to effect the required divestitures.

C. Purpose of the Trust and Appointment of the Trustee

The purpose of the trust under the Final Judgment is to achieve the remaining divestitures to a purchaser demonstrated to the United States' satisfaction (after consultation with the State of Illinois) as having the intent and capability, including the necessary managerial, operational, and financial capability, of competing effectively in the business of exhibition of first-run motion pictures. After the appointment of a Trustee becomes effective, only the Trustee shall have the right to sell the remaining Chicago theatre assets. And, the Trustee shall have the power and authority to accomplish the divestitures at the best price then obtainable upon a reasonable effort. Further, to assist in the divestitures, the Trustee

shall have the power and authority to hire, at the cost and expense of Loews and Cineplex, any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee. Final Judgment Section V. B. Thus, the Trustee will have the power and authority to take whatever actions are required to remove the impediments to successful divestiture of these properties.

II. TRUSTEE PROPOSED BY THE UNITED STATES

The United States urges this Court to appoint Alex D. Moglia as Trustee. Mr. Moglia, is a principal of Alex D. Moglia & Associates, located in Schaumburg, Illinois, a suburb of Chicago. The firm specializes in debt restructuring, locating new equity sources, and finding buyers for all or a portion of clients' assets. In addition, Mr. Moglia and his firm have served as bankruptcy trustees, examiners, custodians and court-approved receivers in numerous federal bankruptcy cases in a wide variety of industries, and has considerable expertise in matters involving commercial real estate.

A University of Chicago-trained attorney, Mr. Moglia is a member of the United States Bankruptcy Trustee Panel, and is a member of the Board of Directors of the American Bankruptcy Institute and has chaired its Finance & Banking Committee.

In our view, Mr. Moglia's prior experiences and previous service as a court-appointed trustee, as well as his location in suburban Chicago, make him well-suited to take on the responsibilities of Trustee under the Final Judgment.

III. CONCLUSION

For all of the foregoing reasons, the United States respectfully requests this Court to appoint Alex D. Moglia as Trustee pursuant to Section V. of the Final Judgment. Defendants do

not object to the Court-appointment of a Trustee under the Final Judgment.

Dated: January 6, 2000

Respectfully submitted,

_____/s/____

Burney P.C. Huber (BH 6293)
Allen P. Grunes
Attorneys for the United States